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U.S. Citizenship  
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FILE:



Office: CHICAGO, IL

Date:

**AUG 11 2009**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and three lawful permanent resident children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 11, 2005.

On appeal, the applicant contends that her family will suffer hardship. *Form I-290B*.

In support of the waiver, the record includes, but is not limited to, statements from the applicant; a medical letter for the applicant's spouse; Forms W-2 for the applicant; mortgage statements; a bank interest income statement; tax returns for the applicant and her spouse; a statement from the social security administration; employment letters for the applicant; a social security benefit statement; a bank statement; a statement from the school attended by the applicant's youngest child; and a statement from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that in August 1995 the applicant procured admission to the United States by using a false passport at the airport in New York. *Record of Sworn Statement*, dated July 7, 2004.

Based on her presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or her children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. Hardship to a nonqualifying relative will be considered to the extent that it affects the applicant's spouse. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Peru or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Peru, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Puerto Rico. *Birth certificate*. Both of his parents reside in Puerto Rico. *Form G-325A, Biographic Information, for the applicant's spouse*. The applicant asserts that her spouse is seriously ill and collects permanent disability benefits due to a severe heart condition. *Statement from the applicant's spouse*, dated July 28, 2004. She notes that he cannot travel due to his condition and would be unable to join her in another country because he would not be able to receive treatment for his medical condition and collect his disability benefits. *Id.* The record includes a statement from the physician of the applicant's spouse. He notes that the applicant's spouse has a history of systemic hypertension, hypercholesterolemia, general anxiety, and benign prostate hypertrophy. *Statement from* [REDACTED] dated July 22, 2004. The applicant's spouse is currently taking medications for these conditions. *Id.* While the AAO acknowledges the applicant's spouse's health problems, it observes that his physician does not indicate the severity of the applicant's spouse's conditions or the extent to which they might limit his ability to function, including his ability to travel. It also notes that the record fails to include published country conditions reports documenting that the applicant's spouse

would be unable to receive adequate care for his medical conditions in Peru. Furthermore, the record fails to document that the applicant's spouse would be unable to collect disability benefits in Peru. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not address whether the applicant's spouse speaks Spanish and how his language abilities, or lack thereof, would affect his adjustment to Peru. The record does not address employment opportunities for the applicant's spouse in Peru and how his health conditions affect his ability to work. The record also fails to document, through published country conditions reports, the economic situation in Peru and the cost of living. The applicant states that her children would suffer if they left the United States. *Statement from the applicant*, dated July 28, 2004. While the AAO acknowledges this statement, it notes that the applicant's children are not qualifying relatives for the purpose of this case and the record fails to document how any hardship the applicant's children may encounter affects the applicant's spouse, the only qualifying relative in this case. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Peru.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Puerto Rico. *Birth certificate*. Both of his parents reside in Puerto Rico. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant asserts that she would not have any employment available to her in Peru as, at 42 years of age, she is considered too old. *Statement from the applicant*, dated July 28, 2004. She notes that her leaving would endanger her family and lifestyle created in the United States. *Id.* The record includes mortgage statements for the applicant and her spouse documenting some of their expenses. *Mortgage statements*. While the AAO acknowledges the assertions of the applicant, it notes that the record fails to include published country conditions reports documenting that the applicant would be considered too old for employment in Peru and, therefore, unable to contribute to her family's financial well-being from outside the United States. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, while the AAO notes that the applicant's spouse receives social security benefits, the record does not demonstrate that the applicant's spouse is unable to perform any type of employment and, thereby, contribute to his family's financial well-being.

The applicant states that the emotional impact of being separated from her spouse will be disastrous for both of them and her children. *Statement from the applicant*, dated July 28, 2004. The AAO acknowledges the emotions of the applicant's spouse. However, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that

which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.